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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE, Plaintiff and Respondent, v. BRYANT DERAY GRIFFIN, Defendant and Appellant.	E067018 (Super.Ct.No. RIF1501404) OPINION

APPEAL from the Superior Court of Riverside County. Becky Dugan, Judge. Affirmed.

Renee Paradis, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Julie L. Garland, Assistant Attorney General, and Barry Carlton and Sabrina Y. Lane-Erwin, Deputy Attorneys General, for Plaintiff and Respondent.

A jury convicted defendant and appellant, Bryant Deray Griffin, of spousal abuse. (Pen. Code, § 273.5, subd. (a), count 1.)[1] The court thereafter found true an allegation defendant had suffered a prior strike conviction. (§§ 667, subds. (c), (e)(1), 1170.12, subd. (c)(1).) The court sentenced defendant to an aggregate term of imprisonment of six years. The court additionally issued a no contact, criminal protective order (CPO) against defendant to expire on October 5, 2019, or just over three years.[2]

On appeal, defendant contends the court erred in issuing a CPO because it was statutorily unauthorized and unconstitutional. We affirm.

I. FACTS AND PROCEDURAL HISTORY

The victim testified that she and defendant had been married for three years; they had two children together. On the date of trial, June 14, 2016, they had been separated for almost two years. On March 27, 2015, when they had been separated for six months, they were coparenting. Defendant had been staying at the victim's residence for a week or two to watch their children while she was working.

After coming home from work that night, she went into her room. Defendant came into her room and asked her for her cell phone. He wanted to check it because he believed she was sleeping with someone else. The victim had hidden her cell phone in

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[1] All further statutory references are to the Penal Code. The facts adduced at trial actually reflect defendant was the victim's *ex*-husband. The jury hung on the count 2 charge of assault by means of force likely to produce great bodily injury (§ 245, subd. (a)(4)), as to which the court declared a mistrial. On the People's motion, the court later dismissed the count 2 charge.

[2] Defendant incorrectly asserts the court issued the CPO for a period of 10 years.

her bottom dresser drawer because defendant had previously broken her cell phone a few times.

Defendant called her cell phone and found it when it began vibrating. The victim attempted to retrieve her cell phone, but defendant pushed her down on the bed several times. The victim called her eldest daughter into the room hoping that her presence would force defendant to stop arguing with the victim; it did not work. The victim ran downstairs; defendant followed.

When the victim attempted to go out the door to the garage, defendant grabbed her arm and pulled her toward him. She pushed him away and told him to leave the house. Defendant grabbed the victim by the neck and started squeezing tightly, which affected her ability to breath; she hit him in the face; he hit her in the left ear. Defendant's eldest daughter "was screaming and crying and trying to pull him off of" her.

Defendant pushed the victim out of the kitchen and into the garage. Defendant then locked her in the garage. The victim opened the garage door and ran to her neighbor's house to have them call the police. The victim wanted defendant removed from her house because she "feared for the safety of [her] girls." Defendant came to the neighbor's house. The victim told him to leave again. Defendant said that if he left he would take the children with him. The victim's neighbor called the police. The victim's neighbor testified defendant came over and tried to grab the victim.

The victim's eldest daughter testified that when she was eight years old she heard the victim and defendant fighting. She went into the victim's room and saw them

arguing. The victim ran out of the room; defendant chased after her. The daughter followed. She went into the kitchen where she saw defendant choking the victim, after which he pushed the victim into the garage. The daughter yelled at defendant.

An officer responded to the 911 call that night at 2:05 a.m. regarding a report that a man was getting physical with a woman. When he arrived at the residence, he observed defendant, who smelled of alcohol and whose speech was slurred. As soon as a backup officer arrived, the officer spoke with the victim, who was "crying, flustered, shaken up." The victim reported she and defendant had been in an argument during which defendant became physical with her. The victim's daughter's report was consistent with that of the victim.

At the sentencing hearing, the court ruled as follows: "So I will sign the no contact criminal restraining order, sir. And it's—I want his children to be listed also as protected people. They were part of the incident. They were victims of the incident. They were witnesses to the incident."[3] The court noted that once defendant was released from jail, showed he had received batterer and drug treatment, and demonstrated he could be sober and peaceful, the court would be willing to change the order. The court marked "the form that says you can go to family law, you can get orders through family law."

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[3] The court had originally issued a no negative contact CPO pursuant to section 136.2 on April 2, 2015, which was set to expire on April 2, 2018. On April 29, 2015, the court terminated the original CPO, but issued a new, no contact CPO pursuant to section 136.2 set to expire on April 29, 2018. The minute order from the sentencing order reflects the court terminated the previous CPO, but issued a new no contact, CPO pursuant to sections 646.9, subdivision (k) and 273.5 set to expire on October 5, 2019.

II. DISCUSSION

Defendant contends the court's no contact CPO issued on the date of sentencing was statutorily unauthorized because neither of the victim's daughters were victims of the crime for which defendant was convicted. Defendant additionally maintains the CPO was unconstitutional. We disagree.

A. *Statutory Power to Issue the CPO*

Defendant contends the court had no statutory authority to issue the CPO as to the children. We disagree.

"Section 136.2, subdivision (i)(1) provides, in pertinent part: 'In all cases in which a criminal defendant has been convicted of a crime involving domestic violence . . . , the court, at the time of sentencing, shall consider issuing an order restraining the defendant from any contact with the victim. The order may be valid for up to 10 years, as determined by the court. . . . It is the intent of the Legislature in enacting this subdivision that the duration of any restraining order issued by the court be based upon the seriousness of the facts before the court, the probability of future violations, and the safety of the victim and his or her immediate family.' 'As used in the chapter containing section 136.2, subdivision (i)(1), "'[v]ictim' means any natural person with respect to whom there is reason to believe that any crime as defined under the laws of this state . . . is being or has been perpetrated or attempted to be perpetrated." (§ 136, subd. (3).)' [Citations.]" (*People v. Race* (2017) 18 Cal.App.5th 211, 216-217 (*Race*).) "With respect to the issuance of a legally authorized criminal protective order, '"'We imply all

findings necessary to support the judgment, and our review is limited to whether there is substantial evidence in the record to support these implied findings.'" [Citation.]' [Citation.]" (*Id.* at p. 217.)

In *Race*, we recently held that "the term 'victim' pursuant to section 136.2 criminal protective orders must be construed broadly to include any individual against whom there is 'some evidence' from which the court could find the defendant had committed or attempted to commit some harm within the household." (*Race*, *supra*, 18 Cal.App.5th at p. 219 [CPO issued upon the defendant's sentencing properly entered against the defendant with respect to his daughter against whom defendant had not been convicted of a crime, but against whom he was originally charged with committing a lewd and lascivious act].) We further held that "in considering the issuance of a criminal protective order, a court is not limited to considering the facts underlying the offenses of which the defendant finds himself convicted . . . ." (*Id.* at p. 220.) "[I]n determining whether to issue a criminal protective order pursuant to section 136.2, a court may consider all competent evidence before it." (*Ibid.*)

Here, the victim testified that defendant locked the victim inside the garage during his commission of domestic violence against the victim: defendant "[c]losed the door and locked it on me *with my girls inside*." (Italics added.) This is at least susceptible to the interpretation that defendant locked the victim *and both daughters* inside the garage. Thus, there is sufficient evidence that defendant perpetrated or attempted to perpetrate the offense of false imprisonment against both children during his commission of the

domestic violence offense against the victim. Moreover, defendant's eldest daughter not only witnessed defendant's acts of domestic violence against the victim, she felt compelled to become physically involved in the conflict: she "was screaming and crying and trying to pull [defendant] off of" the victim. Thus, there was some evidence that the incident involved a physical conflict between defendant and the eldest daughter. Finally, the victim testified that she currently had custody of both children. Once the victim asked defendant to leave, defendant threatened to take both the children with him, a threat which if carried out would amount to kidnapping. Thus, sufficient evidence supported the court's CPO.

B. *Constitutional*

Defendant contends the court's issuance of the CPO as to the children was unconstitutional. We disagree.

In *Race*, the defendant made a similar argument: "Defendant further contends the criminal protective order was the functional equivalent of an order terminating his parental rights without affording him due process of law." (*Race*, *supra*, 18 Cal.App.5th at p. 220.) We held that the issuance of the CPO was constitutional, reasoning as follows: "First, defendant was afforded due process in that he was given ample opportunity to argue against the issuance of the protective order. Instead, both defendant and his counsel agreed to issuance of the order. Second, the criminal protective order is not the functional equivalent of an order terminating parental rights. As the People note, unlike a parent who has had his parental rights terminated, defendant can move the court

to rescind the order upon his release from prison. [Citations.] Moreover, section 136.2 provides mechanisms for cooperation between the criminal, juvenile, and family law courts to permit communication by the subject of the criminal protective order with members of his family if appropriate. [Citations.]" (*Ibid*.)

Here, defendant was afforded due process with respect to the court's issuance of the CPO. After announcing its intention to issue the CPO, defense counsel was given the opportunity to object, an opportunity defense counsel declined. Although unlike defense counsel in *Race*, defense counsel here did not agree to the issuance of the CPO, defense counsel here at least had the opportunity to argue against its issuance; thus, defendant was afforded due process with respect to the issuance of the CPO. Moreover, as in *Race*, the CPO is not "the functional equivalent of an order terminating parental rights." (*Race*, *supra*, 18 Cal.App.5th at p. 220.) The duration of the CPO issued by the court was only for three years. Defendant could move to rescind the order upon his release from prison. (§ 136.2, subd. (a)(1)(G)(i); *People v. Delarosarauda* (2014) 227 Cal.App.4th 205, 211.) Furthermore, as we noted in *Race*, "section 136.2 provides mechanisms for cooperation between the criminal, juvenile, and family law courts to permit communication by the subject of the criminal protective order with members of his family if appropriate. [Citations.]" (*Race*, *supra*, at p. 220.) Indeed, here, the court explicitly marked "the form that says you can go to family law, you can get orders through family law." The court also indicated it would consider removing the CPO if defendant could demonstrate he

could be sober and peaceful. Thus, the court properly issued the CPO with respect to defendant's daughters. (*Ibid*.)

III. DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

SLOUGH
J.